

Before the
New Hampshire Real Estate Commission
Concord, New Hampshire 03301

In The Matter Of: Docket No.: 2012-036
New Hampshire Real Estate Commission v. Linda A. Kramar, Robert A.
Landry & Frederick T. Bussiere
License Nos.: 051717; 011649; 043984
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Linda A. Kramar ("Respondent Kramar" or "Ms. Kramar"), Robert A. Landry ("Respondent Landry" or "Mr. Landry"), and Frederick T. Bussiere ("Respondent Bussiere" or "Mr. Bussiere") in Docket Number 2012-036.

Background Information:

The NH Real Estate Commission at its September 18, 2012 Commission meeting, after deliberating on a hearing held on Complaint File No. 2012-021 NH Real Estate Commission v. Kevin J. Shultz, Re: Complaint of Samuel and Patricia Deckert, instructed the Commission Investigator Ann Flanagan to initiate a complaint against Linda A. Kramer, the listing agent in the real estate transaction complained about in File No. 2012-021 for allegedly failing to treat the prospective buyer honestly and insure that all required real estate condition disclosures were complied with regarding a mold situation, and against Frederick T. Bussiere, the principal broker of Kevin Schultz for allegedly failing to exercise reasonable supervision over the activities of Kevin Schultz during the transaction complained about in Complaint File No. 2012-021. Linda Kramar as the listing agent could have requested approval from Freddie Mac to hire a mold specialist to deal with the mold remediation rather than just hiring a painter/handyman. Frederick Bussiere as Kevin Shultz's principal broker failed to reasonably supervise Mr. Shultz's activities by not reviewing the transaction while it was in process. Reviewing the transaction while in process is necessary to fulfill the fiduciary duties owed

to the buyers by the buyer broker. If Mr. Bussiere had reviewed the transaction while in progress, he would have recognized the discrepancy between the communication from the buyers' lender which had been forwarded to Kevin Shultz from the buyers by email and the addendum Kevin Shultz prepared and submitted to the listing agent concerning the mold situation, and that the receipt from the contractor provided by the listing agent Linda Kramar for \$271 for removal and treatment of mold was low for repair and inspection by a mold specialist, indicating that a mold specialist had not assessed or remedied the mold issue. Mr. Bussiere's fiduciary duties owed to the buyers required this level of diligence, competence and loyalty. Investigator Flanagan also initiated a complaint against Robert A. Landry, as the principal broker of Linda Kramar for failing to supervise the activities of Ms. Kramar during the transaction complained about in Complaint File No. 2012-021. Robert Landry as principal broker to Linda Kramar claims that he was made aware of the mold issue from the beginning and that his supervision was hands on throughout the transaction; yet he allegedly failed to reasonably supervise Ms. Kramar's activities regarding the mold situation in that greater care needed to be taken to determine the extent of the remediation the buyer was requesting.

Subsequent to an investigation, on May 7, 2013, the Commission issued a Notice of Hearing, and on June 13, 2013 issued an Amended Notice of Hearing, scheduled for July 16, 2013.

Background Information of Complaint File No. 2012-021: On June 18, 2012, the Commission received a complaint from Samuel and Patricia Deckert, who alleged that Kevin Shultz demonstrated incompetency and untrustworthiness acting as their buyer agent for the purchase of a bank-owned townhouse. The Deckert's lender, Holy Rosary Credit Union completed an appraisal of the property, and as a result of the appraisal, the Holy Rosary Credit Union sent an e-mail to the Deckerts regarding mold found in the downstairs bathroom, and required that an inspection be completed by a mold specialist to confirm the extent of mold and cost to repair, and that the mold would need to be removed and repaired prior to closing. The Deckerts forwarded this e-mail to Kevin Shultz, but Mr. Shultz did not forward the e-mail to the listing agent, Linda Kramar. Rather Kevin Shultz submitted a written addendum to the purchase and sales agreement to the listing agent

Linda Kramar which stated "seller to remove affected mold areas and treat". The listing agent Linda Kramar hired Timothy Wight of Affordable Painting Contractors & Remodeling to remove visible mold. The contractor only removed the mold that was visible. The lender's appraiser subsequently inspected the property and it was approved for financing. After the Deckerts closed on the property and began remodeling, they discovered that there was mold in the bathroom, kitchen, and dining area. The Deckerts felt that if Kevin Shultz had forwarded the e-mail from their lender outlining the steps that were required to remedy the mold issue to the listing agent Linda Kramar, she would have hired a mold specialist as required by the e-mail from the buyer's lender and that the mold specialist would have found the mold problem to be more extensive.

On Tuesday, July 16, 2013, at 9:48 a.m., the Commission commenced the adjudicatory/disciplinary hearing on Complaint File No. 2012-036. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
Daniel S. Jones, Commissioner
William E. Barry, Commissioner
Paul A. Lipnick, Commissioner

The prosecution was conducted by Ann Flanagan, the Commission's Investigator. Ms. Kramar and Mr. Landry were represented by Attorney Daniel J. Corley, and Mr. Bussiere was represented by Attorney Robert E. Murphy, Jr.

The following exhibits were introduced into evidence and accepted into the record:

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 - Complaint File 2012-036: pages 1-436.
- Respondent Bussiere Exhibits:
Exhibit A – Independent Contractor Agreement, pages 1-21
Exhibit B – Office Policy and Procedures Manual, pages 22-67
- Exhibit C – Training Materials, pages 68-151

¹ These same Commission members also deliberated and voted on this Final Decision and Order.

- Exhibit D – Folder Checklist, page 152
- Respondent Kramar & Landry Exhibits: None.

The following witnesses were present and testified for Respondent Bussiere at the hearing:

- James T. DeStefano

Findings of Fact:

In light of the testimony and exhibits, the Commission finds the following facts:

Attorney Robert Murphy submitted to the Commission a Motion to Dismiss on behalf of Respondent Bussiere. The Motion to Dismiss is denied. New Hampshire law does not require the presentation of expert testimony on whether Respondent Bussiere violated his duty of supervision. The Commission may use its “experience, technical competence and specialized knowledge” to evaluate evidence. Petition of Grimm, 138 NH 42, 55 (1993); Appeal of Kelly, 158 NH 484, 493 (2009). Expert testimony is not necessary in all cases. Id. Respondent was adequately notified regarding the actions or omissions which were the subject of the complaint of lack of reasonable supervision.

1. Respondent Kramar was first granted a NH real estate salesperson's license on April 5, 1999. At the time of the allegations, Respondent Kramar was licensed as a real estate salesperson, license number 051717. Respondent Landry was first granted a NH real estate salesperson's license on January 9, 1978 and a NH real estate broker license on April 3, 1979. At the time of the allegations, Respondent Landry was licensed as a NH real estate broker, license number 011649. Respondent Bussiere was first granted a NH real estate salesperson's license on June 14, 1993 and a NH real estate broker's license on January 8, 2001. At the time of the allegations, Respondent Bussiere was licensed as a NH real estate broker, license number 043984.

2. Respondent Bussiere stated in his reply to Complaint File No. 2012-036 that he did not discover the discrepancy between the email communication from the buyer's lender and the

addendum prepared by Kevin Shultz, and that the issue was not brought to his attention by Mr. Shultz prior to the closing. (Ex. 1, pg. 431)

3. Respondent Bussiere testified at the hearing that he did not see a significant difference in what the appraiser for the buyer's lender wrote and what the addendum prepared by Kevin Shultz called for.

4. Respondent Bussiere stated at the hearing that he does not have a requirement in his office that when there is an addendum or amendment to an executed purchase and sales agreement that it be presented to him or someone else in the office for review, only new agents within the first 6 months would be required to present documents for review.

5. Respondent Bussiere testified that because Kevin Shultz did not bring the mold issue to his attention, he could not supervise the issue.

6. Mr. Bussiere testified that he has a checklist that is checked off by his wife who is his manager/secretary when documents of a transaction are received by the agent. Respondent stated that his wife makes sure there is an executed purchase and sales agreement, but stated that his wife does not check the content of purchase and sales agreements for accuracy.

7. Respondent Bussiere testified that he does not, in the course of a week, go around to his agents to see what they are working on, and stated that he does not spot check documents in a transaction.

8. Respondent Bussiere testified to the following regarding supervision:

- He is a hands on principal broker;
- He holds office meetings with his agents every Wednesday;
- He has an open door policy to his agents to discuss any issues they may have;
- He feels that for the Real Estate Commission to expect him to review commitment letters and check issues related to it is above and beyond what a supervising broker should have to do, and that the review of the commitment letter is the job of the licensed agent not the supervising broker;
- He does not feel it is the supervising broker's responsibility to review all transactions while they are in process;
- He is not required as the supervising broker to review commitment letters, home

inspections, septic inspections or appraisal reports;

- Supervising brokers are available for when agents approach them with an issue;

9. Respondent Kramar stated that she had been doing Freddie Mac foreclosure property since 2007 and foreclosures are mainly her business, and she does not take on buyers and sellers.

10. Respondent Kramar explained that the Freddie Mac contract states that there are no repairs to be done on the property, and the property is purchased as is, and if the buyer doesn't want the property as is, they can walk away.

11. Ms. Kramar stated that Freddie Mac's policy on mold is that they will not allow her to remediate, they will not allow her to get a mold specialist, and that everything is examined by a general contractor, they will remove what is visible, treat what is behind it and that is it.

12. Ms. Kramar stated that when she sent the e-mail to the asset manager she asked how they wanted the repair of the mold done. She always gives them the option to decide to do more than what is done traditionally. Ms. Kramar stated that the asset manager asked her to stay with their general policy to cutout and treat the mold by a general contractor. Respondent Kramar hired Thomas Wight for a total cost of \$271. (Ex. 1, page 294)

13. Respondent Kramar testified that she had no knowledge that the appraiser for the buyer's lender was requiring a mold specialist, and if she had known that a mold specialist was required, she would have communicated the request to the asset manager, and the asset manager would most likely come back and say that they would not remediate, and then it would be up to the buyer to decide whether to go forward with the transaction.

14. Respondent Kramar testified that she never saw any of the communications between the buyer and Kevin Shultz regarding the mold.

15. Ms. Kramar testified that on the property disclosure it states bank owned unknown, because Freddie Mac had no knowledge of the property because it was a foreclosure, so there was no knowledge of mold prior to the completion of the property disclosure.

16. Respondent Landry was Ms. Kramar's principal broker during the transaction. Respondent Landry of Kramar & Landry Real Estate stated at the hearing that the firm is a two person office, just himself and Ms. Kramar, and they are both involved in all transactions.

17. Respondent Landry testified that they never received the buyer's appraisers comments regarding the remediation of the mold, only the addendum prepared by Kevin Shultz.

18. James DeStefano testified as a witness for Respondent Bussiere regarding supervision. Mr. Destefano stated that he is the vice president of sales and marketing for Colliers International NH, and is an active broker and a sales manager.

19. Mr. DeStefano, as a witness explained that prior to the hearing he reviewed Mr. Bussiere's policy and procedures manual, training materials and office checklist. He also reviewed RSA 331-A, the Administrative Rules Rea 100-700, and the National Association of Realtors Code of Ethics, and other real estate states laws and rules and could not find a clear definition of reasonable supervision.

20. Mr. DeStefano feels that it is an important role to monitor a transaction in progress to identify potential problems or to deal with changes in a contract, but felt that it is impossible to do this on every transaction. He also feels that a supervising broker should be as proactive as possible and should take an affirmative step to discover potential problems in a transaction, and he felt that Respondent Bussiere was being a proactive broker providing supervisory service to his office.

Relevant Law:

RSA 331-A:1 Purpose. It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

331-A:2, XV. "Unprofessional conduct" means any action by a licensee or accredited individual, institution, or organization which is unlawful, dishonorable, unethical, or immoral.

331-A:25-b Seller Agent; Duties.

II. The duties of a licensee acting on behalf of a seller or landlord to a buyer or tenant include:
(a) Treating all prospective buyers or tenants honestly and insuring that all required real estate condition disclosures are complied with.

331-A:26, Prohibited Conduct. – The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

XXVII. In the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of licensees and any unlicensed staff.

XXIX. Unprofessional conduct defined in RSA 331-A:2, XV:

XXXVI. – Demonstrating untrustworthiness or incompetency to act as a broker or salesperson.

Rulings of Law:

The Commission makes the following findings by a preponderance of the evidence:

1. Respondent Bussiere failed to exercise reasonable supervision over the activities of Kevin Shultz by not reviewing the transaction while it was in progress, and if he had done so he would have recognized the discrepancy between the communication from the buyer's lender which was forwarded to Kevin Schultz from the buyer by e-mail and the addendum prepared by Kevin Schultz, as well as the low invoice of \$271 for an inspection and repair by a mold specialist. Therefore, the Commission rules that Respondent Bussiere did violate RSA 331-A:26, XXVII. (Notice of Hearing, paragraph 5E)

2. Because Kevin Shultz failed to forward the e-mail from the buyer requiring the inspection to be done by a mold specialist to Respondent Kramar, and Ms. Kramar was only provided with the addendum prepared by Kevin Shultz which stated "Due to the appraisers inspection results report, buyer requests seller to remove affected mold areas and treat", Respondent Kramar was found to have no knowledge of the buyer's appraiser's requirement that an inspection of the mold be completed by a mold specialist to confirm the extent of mold and cost to repair. Respondent Kramar and the seller, Freddie Mac, had no knowledge of the mold prior to the appraiser's inspection. Therefore the Commission rules that Respondent Kramar did not violate, RSA 331-A:25-b,II,(a); RSA 331-A:26, XXIX; and RSA 331-A:26, XXXVI. (Notice of Hearing, paragraph 5A, 5B, and 5C)

3. The Commission rules that Respondent Landry as Ms. Kramar's principal broker did not fail to exercise reasonable supervision over the activities of Ms. Kramar, and therefore did not violate

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Commission has voted to order the following:

IT IS **ORDERED** that Respondent Bussiere pay a disciplinary fine in the amount of one-thousand dollars (\$1,000) to the New Hampshire Real Estate Commission, payable to the Treasurer State of New Hampshire within ninety (90) days of the effective date of this Order; and Respondent shall show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course on Supervision by submitting to the Commission an affidavit of the completed course (this continuing education course is to be completed by classroom delivery method only and will not to be counted towards Respondent's continuing education requirements for renewal of license) within six (6) months of the effective date of this Order. Failure to comply with this disciplinary Order will result in the suspension of Respondent Bussiere's real estate license until the fine is paid and the course is completed.

IT IS **FURTHER ORDERED** that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 331-A:26, XXIX, and a separate and sufficient basis for further disciplinary action by the Commission against the Respondent.

IT IS **FURTHER ORDERED** that this Final Decision and Order shall become a permanent part of the Respondent's disciplinary file, which is maintained by the Commission as a public document.

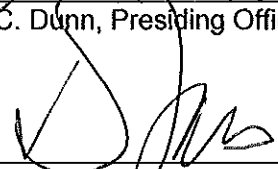
IT IS **FURTHER ORDERED** that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").

IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Commission on the date the Commission signs it.



David C. Dunn, Presiding Officer

10/18/2013
Date



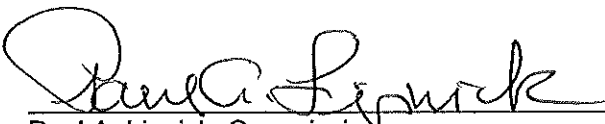
Daniel S. Jones, Commissioner

10/18/2013
Date

Wm. E. Barry

William E. Barry, Commissioner

10/18/2013
Date



Paul A. Lipnick, Commissioner

Oct. 18, 2013
Date

*\ James R. Therrien, Commission member, (case evaluator) recused.